1952

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File No. Homeopathy II 52 (R)

Legal Dept.

B BRANCH

p12(e)

1952

Subject:— Rules under the Bombay Homeopathy Act, 1951

File No. Homeopathy II /52 (R)

Gen. 194 e.

126-B

Legal Department.

The preamble to the draft rules (page 7 ante) states that the rules are framed under clause (g) of section 37(2) of the Bombay Homeopathic Act which provides for making rules prescribing the manner of inquiry under section 19(3) and the form of certificate under section 19(5) of the Act. The draft rule 8 prescribes the form of certificate but draft rules 1 to 7 do not relate to the mode of inquiry as contemplated by section 19(3) of the Act but provide for the mode of making application for registration. As such, draft rules 1 to 7 are not referable to clause (g) of section 37(2) under which they purport to be made. According to section 19(3) the inquiry is to be made according to the manner prescribed after the receipt of application. This purpose is not served by the draft rules as framed by the Surgeon General.

As the intention is to make rules under clause (g) of section 37(2), the L.S.G.& P.H.D is requested to frame rules laying down the manner of inquiry after the receipt of an application for registrarion. In this behalf the attention of the L.S.G. & P.H.D. is invited to rule 121 of the Bombay Medical Practitioners Rules, 1939 wherein the manner of inquiry has been prescribed in respect of applications for registration under section

Contd.

31-C of the Bombay Medical Practitioners Act, 1938. If the intention is that the draft rules at pages 7-11 ante should also be made they should be sent to L.S.G. for scrutiny along with the rules under clause (g) of section 37(2) laying down the manner of making inquiry.

The L.S.G.& P.H.D. may also note that it would not be possible to bring into force the proposed rules simultaneously with the publication of the Act as the rules require previous publication under section 37(1) of the Act.

J.R.Dhurandhar.
19/1.
o.c.
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 846, dated the 19th January 1952.

29/6.

Local Department.

In place of the draft rules at pp. 33 to 37 ante a requisite draft notification is sent herewith.

L.S.G.& P.H.D. draft rule 1 :- Under the Bombay Homoepathic Act, 1951, it would not be the function of the Tribunal to prescribe a form of application. If the Department thinks that it is necessary to prescribe a form of application, the form should be prescribed in the proposed rules. Draft rule 1 is not, therefore, incorporated in the revised draft.

L.S.G.& P.H.D. draft rule 3 :- An examination for the purpose of sub-clause (b) of clause (i) of sub-section (3) of section 18 of the Act can be approved by the Tribunal straightway. No rule is necessary for the purpose. The Tribunal should approve and notify any such examination before the date fixed under section 19(2) of the Act for the receipt of applications.

L.S.G.& P.H.D. draft rule 8 :- When the applicants are required to produce declarations signed before a magistrate not below the rank of a first class, regarding the particulars mentioned in the application, another declaration on oath as proposed in draft rule 8 is

redundant. Draft rule 8 is not therefore, incorporated in the revised draft.

Draft rule 9.- It would not be proper to send the applications to the Police authorities. It would be sufficient if they are sent to the Collector or the Civil Surgeon of the district. There is no provision in the Bombay Police Act, 1951 requiring the police to make inquiries in such matters.

L.S.G.& P.H.D.draft rule 11 .- Section 19(3) of the Act alreadycontains the necessary provision. It is not necessary to have a rule as proposed.

L.S.G. & P.H.D. draft form of certificate

The form of certificate as proposed by the Department is not in order. The Act does not provide for the issue of a new certificate by the Board in every case. According to the proviso to section 18(3), a provisional certificate is to be issued to a practitioner whose name is enrolled in Part C of the register. As regards other practitioners, the certificates issued to them would be permanent. In view of the provisions of section 18 of the Act, two forms of certificate or registration are incorporated in the revised draft.

R.Dhurandhar. 22/2.

P.T.O

Contd.

o.c.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 2953, dated the
22nd February 1952.

MM

29/6.

L.D.

It is necessary to publish under ~~the~~ x rules to be made under section 37 of the of the Bombay Homoeopathic Act 1951 the ıs and the course of training ɔd for persons enrolled in Part C or the register. The said can be approved by Govt. on the recommendation of the Board

Addl. to Secy to Govt.

U.R. to L.S.G.& P.H.D.

MM

29/6.

Local Department.

It is not necessary to publish under rules to be made under section 37 of the Bombay Homoeopatic Act, 1951, the syllabus and the course of training intended for persons enrolled in Part C of the register. The said can be approved by Government on the recommendation of the Board.

J.N.Murandhar

7/3

o.c.

Additional Secretary to Government

U.R. to L.S.G.& P.G.D. No. 3652, dated the 7th March 1952.

MI

29/6

Legal Department.

A revised draft rule 4(2) is sent herewith

2. Under section 18(3)(1)(b) the applicant must have received personal clinical instructions and also passed an examination approved by the Tribunal. It will not be feasible to delete the last sentence in draft rule 4(2) at page 78 as proposed. The provision should apply as soon as any examination is approved by the Tribunal. The draft rule has accordingly been suitably revised.

B.P.Dalal
9/5.
o.c.
Additional Deputy Secretary to
Government.

U.R. to L.S.G. & P.H.D.No. 7304, dated the 9th May 1952.

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29/6.

Revised draft rule.

4(2) A practitioner qualified for having his name entered under sub-clause (b) of clause (i) of sub-section (3) of section 18 in Part A of the register shall produce along with his application -

(a) a certificate from a person in charge of a hospital where indoor patients are kept and where the service includes surgery, gynae- cology and midwifery and Homoeopatic medicine, to the effect that he has received personal clinical instruction in such hospital for a period of not less than two years or pending production of such certificate, a declaration made by him to the like effect before a Presidency Magistrate or a Magistrate not below the rank of First Class; and

(b) if the Registration Tribunal has approved in this behalf any examination in the aforesaid subjects, a certificate of having passed such examination."

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29/6.

Legal Department.

A draft notification containing revised draft rules is sent herewith.

2. Rule 3 of the Deptt. draft.- This corresponds to rule 5 of the revised draft.

(a) clause (a) of rule 3 on page 39 ante provides that it shall be the duty of the Court to prescribe the course of training and the standard and subjects of qualifying examinations etc. Power in this behalf vests in the State Government under section 29(1) of the Act. The power to make recommendations with regard to the course of study etc. is vested in the Board under that section. There is however no objection to empower the Court also to make recommendations regarding the course of study etc. to the Board as provided under section 17(5) of the Act. Clause (a) has accordingly been amended.

(b) clause (b) of rule 3 on page 39 empowers the Court to fix fees for examiners and the allowances to be paid to them. The power to prescribe fees of examiners vests in the Board under section 38. Reference to the fixation of fees and allowances has therefore

been deleted from clause (b) of rule 5 of the revised draft.

(c) clauses (g), (j) and (k) of the Department draft are outside the scope of section 37(2)(e) read with section 17 of the Act. These clause have therefor been deleted

(d) Rule 36 of the Department draft on page 53 ante has been inserted as clause (g) of rule 5 of the revised draft.

3. Rule 3A of Department draft on page 41 ante - (Revised rule 3).- This draft rule provides that the term of office of members of the Court shall be 5 years and shall be co-extensive with that of the members of the Board. Under section 6(1) of the Act the term of office of the members of the Board is also 5 years commencing from the date on which the first meeting of the Board is held. It is therefore pointed out that it would be necessary to elect the members of the Court at the first meeting of the Board as failure to elect would result in curtaining the term of office of the members of the Court and the position would then be repugnant to theproposed rule 3 of the revised draft.

4. Rules 4 and 5 of the Department draft on page 41 -(revised rule 4) - Section 17(3) provides that any vacancy in the office of